FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

DISTRICT : RAIGAD

WRIT PETITION NO.1032 OF 2005

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders	Court's or Judge's orders

Ms Gauri Godse for Petitioners.
Mr P.S. Dani for Respondents.

CORAM : D.K. DESHMUKH J.
DATE : 28TH SEPTEMBER 2005
P.C. :-

1. By this petition, the petitioners challenge the order passed by the Trial Court dated 23rd July 2004. By the application, review of several orders was sought. One of the orders of which review was sought is dated 15th January 2001 passed on application at Exh.18 on the record of special suit No.72 of 1997. That application was filed by the petitioners / defendants for recasting the issue. That application was disposed off and rejected by the Court by passing following order :-

> "Both the parties and their Advocates absent. Issues framed to cover the contentions of parties

properly as per the rules of evidence. Hence the application is rejected."

. Perusal of the review application shows that though the order dated 15th January 2001 was passed on merit, the entire review application was that the order wrongly records that the defendants and their lawyer were absent. According to the defendants, before the order was passed, the matter was adjourned to some other date and thereafter the order was passed. In the entire review application, events have been narrated to show that the defendants were justified in remaining absent. In my opinion, even accepting that the Advocate for defendants was justified in remaining absent at the time when the order was passed, the order was not reviewable merely because it was passed in the absence of the defendants. Because the order was passed on merit, it was for the defendants to show how and why there is an error apparent on the face of the order. An order does not become reviewable merely because it is passed in the absence of party. Even if the order

is passed in the absence of the party, then it is for the party which is challenging that order to show how the order is erroneous and how it results in causing prejudice to the interest of that party. No such attempt was made either in the review application or in this petition. Perusal of the record shows that the issues were framed on 20th July 2000 and they were recasted on 23rd July 2004. It appears that the issues were recasted by the Court on the same day on which the review application filed by the petitioners was decided. Comparison of the recasted issues and the issues which according to the defendants ought to have been framed shows that it cannot be said that any prejudice is caused to the interest of the defendants because of the rejection of the application of the defendants for framing additional issue. In the absence of any proof, this Court will not be justified in entertaining the petition filed under Article 227 of the Constitution of India. While entertaining the petition, this Court must be satisfied firstly by making averments in the petition and thereafter by pointing out orally as to how impugned

order has caused prejudice to the petitioners. Merely because the order is passed without following proper procedure, this Court will not be justified in interfering with the order if this Court is not shown that the order has caused prejudice to the interest of the petitioners or that the order results in failure of justice. The petitioners have not even made an attempt to show as to how in the face of recasting of issues by the Court, the impugned order has caused prejudice to the interest of the petitioners. To my mind, it appears that the whole object of filing this petition was to prolong the trial of the suit and therefore, there is room to say that the petition was filed in this Court with malafide intention. The petition therefore is liable to be rejected. It is accordingly rejected. The petitioners are directed to pay as and by way of cost Rs.5,000/- to the respondents. It is clarified that though review was sought of orders passed on two more applications, at the hearing of the petition, nothing was argued about the orders passed on the other applications except the application for framing of

additional issues.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary as true copy.

. Certified copy expedited.